No. 78-1487

IN THE

Supreme Court of the United States

October Term, 1979

FORD MOTOR CREDIT COMPANY, et al.,
Petitioners,

v.

DENNIS MILHOLLIN, et al.,
Respondents

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF AMICI CURIAE OF NATIONAL CONSUMER FINANCE ASSOCIATION AND GENERAL MOTORS ACCEPTANCE CORPORATION

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STATEMENT OF INTEREST OF AMICI CURIAE

This brief amici curiae is filed by the National Consumer Finance Association and General Motors Acceptance Corporation with the written consent of counsel for the parties.

NCFA is the nation's largest trade association serving the consumer finance industry. Founded in 1916, the Association has as members nearly 800 consumer finance

and industrial banking companies operating more than 17,000 offices across the United States. Members of NCFA hold approximately $45 billion in outstanding consumer credit. GMAC is a credit finance institution engaged in the business of purchasing retail installment contracts from automobile dealers. GMAC conducts its operations from 394 branch offices in the United States and Canada, from which it provides financing services to over 18,400 General Motors dealers. At the present time, GMAC holds more than 4 million retail installment contracts representing over $14 billion in outstanding credit.

GMAC and the members of NCFA are engaged in business in every state in the nation. A substantial portion of that business involves making consumer loans and acquiring retail installment contracts that are subject to the Federal Truth in Lending Act and Regulation Z. The decision in this case will affect every consumer loan and retail installment contract held by GMAC and the members of NCFA.

QUESTION PRESENTED

Neither the Truth in Lending Act nor the Federal Reserve Board's Regulation Z issued thereunder specifically calls for disclosure of the provision for acceleration of payments upon default that is found in all installment contracts. The Federal Reserve Board has ruled that disclosure is required by reason of an acceleration clause only in the limited case when a difference in rebating unearned finance charges upon voluntary prepayment, on the one hand, and prepayment following acceleration on the other, means that a borrower who prepays following acceleration is made to pay what amounts to a default charge, the disclosure of which is in terms required by both the Act and Regulation Z.

The question presented is whether the Act and Regulation Z nevertheless require disclosure of the common acceleration provision.

STATEMENT

The relevant facts are quickly stated. Respondents purchased automobiles from Ford dealers on installment contracts. The contracts were assigned to petitioner Ford Motor Credit Company. The contracts were single-sheet documents, printed on both sides. (App. 9-10, 65-66.) The front side contained disclosures required by the Truth in Lending Act and Regulation Z as well as contractual terms. The reverse side contained additional contractual terms. One term stated on the reverse side was this:

> "In the event Buyer defaults in any payment. . . or fails to comply with other provisions hereof. . . Seller shall have the right to declare all amounts due or to become due hereunder to be immediately due and payable . . . ." (App. 10, 66.)

This is an "acceleration provision, similar to that found in many installment undertakings," which this Court noted as present also in the contract in *Mourning* v. *Family Publications Service, Inc.*, 411 U.S. 356, 358 (1973).

On the front side of the contract was a provision for prepayment, which stated that, if the buyer prepaid, he would receive a rebate of the unearned portion of the finance charge computed according to a certain method after the deduction of a $15 fee. (App. 9, 65.) Under Ford Credit's company policy (App. 22, 68) and under the law of the state where the contracts were executed, Oregon, the same rebate would be paid whether the purchaser

prepaid the entire debt voluntarily or did so in response to an exercise of the acceleration privilege.

Also on the front side, properly disclosed, was a provision for a delinquency charge of 5 percent or $5, whichever was less, for payments late by more than 10 days. (App. 9, 65.)

Respondents fell behind in their payments. Ford Credit accelerated the unpaid installments and repossessed the automobiles. These Truth in Lending Act lawsuits followed. Respondents prevailed on various truth-in-lending grounds in the district court. (App. 26-41, 69-74.) The court of appeals affirmed on the sole ground that the existence of the acceleration provision of the contract and the fact that the same rebate would be paid for prepayment upon acceleration as upon voluntary prepayment must be disclosed and were not disclosed. (App. 42-54.) It engaged in no analysis but simply followed a decision of a differently-constituted panel of the same court. *St. Germain* v. *Bank of Hawaii,* 573 F.2d 572 (9th Cir. 1977). (Pet. 40a-51a.)

ARGUMENT

Acceleration clauses, which if not quite universal must be the most nearly universal of all installment contract provisions, are not mentioned in the disclosure requirement provisions of the Truth in Lending Act or those of the Federal Reserve Board's Regulation Z. In consonance with the silence of Congress and with its own silence as the agency that Congress chose to fill whatever gaps it may have left in the statutory regime of credit cost disclosure, the Federal Reserve Board has ruled, both formally and informally, that there is no general requirement to

disclose acceleration clauses. The Board's position is fully consistent with the statutory purpose.

Proper regard for the role of the Federal Reserve Board as Congress' chosen instrument under the Truth in Lending Act, as described by this Court in *Mourning* v. *Family Publications Service, Inc.,* 411 U.S. 356 (1973), and proper regard for the general rule of deference to an agency's construction of its own regulations, *Udall* v. *Tallman,* 380 U.S. 1, 16 (1965), demand that significant and perhaps controlling weight be given to the Federal Reserve Board's views. The court below, instead, acting on its own view of the "overriding purpose of Congress in enacting" the Truth in Lending Act (Pet. 49a), has read a requirement of disclosure of all acceleration clauses into an inapt provision of Regulation Z.

It is particularly important that, in reversing the judgment based on that plainly erroneous reading, this Court insist upon respect by the judiciary for the authoritative views of the Federal Reserve Board. Hundreds of Truth in Lending Act cases are in the courts, and more are filed regularly.[1] The results in cases that have been decided — those involving the issue posed in this case as well as others — demonstrate the likelihood of conflicting results in pending and future cases. This Court cannot realistically expect to resolve all the differences. This is only the second Truth in Lending Act case that it has heard in the 10 years the Act has been on the books. Congress meant that there

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[1] About 2,000 truth-in-lending cases have been filed in the federal district courts alone during each of the last four years. The number of truth-in-lending cases filed each year, for the 12-month period ending June 30, was: 1975 - 2237; 1976 - 2147; 1977 - 2183; 1978 - 1957. 1978 Annual Report of the Director, Administrative Office of the United States Courts 83.

should be uniform nationwide standards of disclosure. Proper deference by the courts to the views of the Federal Reserve Board would result in a greater measure of uniformity than has prevailed.

I. NEITHER THE STATUTE NOR THE REGULATION IN TERMS REQUIRES DISCLOSURE OF ACCELERATION CLAUSES AND THE FEDERAL RESERVE BOARD HAS RULED THAT NO SUCH DISCLOSURE IS REQUIRED.

In most cases that this Court hears involving the construction of a federal statute or regulation, there is at base a true ambiguity. We submit that there is no such ambiguity here.

In the case of credit sales not under an open-end credit plan — which is what is involved here — Section 128 of the Truth in Lending Act requires the disclosure of a number of items. 15 U.S.C. § 1638. Acceleration clauses are not among them. In fact, since the enactment of the Act, only one provision, Section 128(a)(9), has been suggested as the source of a requirement that acceleration clauses be disclosed. That subsection requires the disclosure of "[t]he default, delinquency, or similar charges payable in the event of late payments." The Federal Reserve Board, pursuant to its duty under Section 105, 15 U.S.C. § 1604, to "prescribe regulations to carry out the purposes of" the Act, has adopted a provision within its Regulation Z that tracks and somewhat amplifies Section 128(a)(9). It requires disclosure of "the amount, or method of computing the amount, of any default, delinquency, or similar charges payable in the event of late payments." 12 C.F.R. § 226.8(b)(4). Although some district courts, following the early lead of *Garza* v. *Chicago Health Clubs, Inc.*, 347 F. Supp. 955 (N.D. Ill. 1972), managed the difficult chore of shoehorning the creditor's acceleration privilege into

the concept of a late charge, every court of appeals that has addressed the issue has rejected that interpretation of "charges."[2] Indeed, the court below in *St. Germain* v. *Bank of Hawaii,* 573 F.2d 572, 573-74 (9th Cir. 1977), the case that was the sole authority for the decision here, refused to rest its decision on Section 128(a)(9) or the corresponding provision of Regulation Z and succinctly made the case against reading so much into "charges." (Pet. 42a-43a.)

The Federal Reserve Board went beyond the specifics of the statute in fulfilling its statutory duty to prescribe regulations to carry out the purposes of the Act. But it, like Congress, said nothing about acceleration clauses. In Section 226.8(b)(7) of Regulation Z, the Board did require identification of the method of computing any unearned finance charges that will be rebated in the event of prepayment and disclosure of the fact, whenever it is a fact, that unearned finance charges will not be refunded upon prepayment. 12 C.F.R. § 226.8(b)(7).

Section 226.8(b)(7) seems plainly, on its face, not to amount to a general requirement to disclose the existence of acceleration clauses. The Board's staff, when asked, has confirmed that no such general requirement was intended by that provision or, much less, by Section 226.8(b)(4). On that question it has not, as the court below asserted in *St. Germain,* "issued conflicting signals . . . ." (Pet. 50a.) It has been steadfast and consistent.

In an Official Staff Interpretation,[3] the Board's staff

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[2] See cases cited at p. 17, *infra.*

[3] No. FC-0054, 42 F.R. 18056, [1974-1977 Transfer Binder] Cons. Cred. Guide (CCH) ¶ 31,552. (Pet. 52a-56a.)

followed an earlier Public Information Letter[4] and stated that, while there is no requirement to disclose the very existence of the creditor's privilege of accelerating payment, the treatment of unearned finance charges upon payment following acceleration may give rise to a disclosure requirement. As a general matter the Board ruled that if unearned finance charges are rebated upon payment after acceleration in the same way they are rebated upon early payment without acceleration, the disclosure of the general prepayment terms in compliance with 12 C.F.R. § 226.8(b)(7) is enough. Since the debtor is treated the same whether he pays early voluntarily or involuntarily, and since he has already been informed of the terms of early payment, there is no need to disclose the acceleration clause. On the other hand, if an amount is retained upon payment following acceleration that would have been rebated upon voluntary prepayment, that penalty is not revealed to the debtor by disclosure of the prepayment clause. When the terms of payment following acceleration vary from terms of prepayment, without acceleration, the Board reasoned, disclosure of the extra amounts due upon payment following acceleration is required in order to inform the debtor of a "charge" for late payment under 12 C.F.R. § 226.8(b)(4).

In the instant case, as has been stated, by law and by company policy, the same rebate would be paid in either case in accordance with the prepayment disclosure in the contract.

The court below in *St. Germain* nevertheless took the Board's position and twisted it into an "equat[ion of] acceleration with prepayment" (Pet. 50a), so that in all cases the creditor must disclose whether a rebate of unearned interest will be made on acceleration and disclose the method of computing the amount of the rebate – even though the rebate is exactly the same as upon voluntary repayment.

[4] No. 851, [1974-77 Transfer Binder] Cons. Cred. Guide (CCH) ¶ 31,173. (Pet. 57a-58a.) *See also* Public Information Letter No. 1208, [1974-1977 Transfer Binder] Cons. Cred. Guide (CCH) ¶ 31,647; and Public Information Letter No. 1324, Cons. Cred. Guide (CCH) ¶ 31,827. (Pet. 59a-63a.)

The whole idea of equating acceleration and prepayment is otherworldly. Acceleration is a remedy for default, and the debtor who has defaulted on one installment is not likely to pay off the balance of his debt in one payment. Acceleration is actually a procedural device, enabling the creditor to sue at once for the entire debt instead of for each installment as it falls due.

The court of appeals professed to find guidance in "Congress' overriding interest in disclosure to provide consumer protection." (Pet. 44a.) But Congress had no interest in disclosure in general. Its interest was in compelling disclosure of those aspects of credit that would enable the borrower or purchaser to determine the cost to him of the loan he was thinking of taking or the credit purchase he was thinking of making – and to be able to compare that cost with the cost at the finance company or car dealer down the street. § 102, 15 U.S.C. § 1601.

Congress specified some items that are relevant to that comparative cost computation. The Federal Reserve Board, acting pursuant to a congressional mandate, saw that Congress had omitted at least one item that could affect the cost of credit for some borrowers or purchasers – the treatment by the creditor of unearned interest when the debt was paid off early. It therefore included Section 226.8(b)(7) in Regulation Z. But if, as all seem to agree is the case, acceleration clauses are found in all or virtually all installment contracts, to require the creditor to disclose that he has the privilege of accelerating payments on

default would not facilitate comparative shopping for credit. Any such requirement would simply add further clutter to disclosure statements that, as this Court can see by just looking at the examples in the record (App. 9, 65), are already so cluttered that one must doubt how effectively they convey useful information to prospective borrowers or purchasers.

II. EVEN MORE THAN USUAL DEFERENCE IS OWING TO THE FEDERAL RESERVE BOARD'S CONSTRUCTION OF THE STATUTE AND OF REGULATION Z.

Even if the question were closer, the court below erred in disregarding the authoritative views of the Federal Reserve Board as to the meaning of the statute and Regulation Z.

Congress gave the Board a unique role in carrying out the Act. It provided in Section 105: "The Board shall prescribe regulations to carry out the purposes of this Act." 15 U.S.C. § 1604. That is sweeping authority. Thus, no one could seriously challenge the Board's power to adopt the prepayment disclosure requirement of Regulation Z, even though prepayment is not mentioned in the Act. In Section 103(q) Congress reemphasized the Board's position by stating that any reference in the statute to a provision of the Act automatically includes the regulations promulgated by the Board under that provision. 15 U.S.C. § 1602(q). Other agencies are empowered to enforce the statute with respect to entities they supervise — *e.g.*, the Civil Aeronautics Board as to air carriers, the Interstate Commerce Commission as to surface carriers and the Federal Trade Commission as to corporations generally. The truth-in-lending law they enforce includes the regulations issued by the Federal Reserve Board. §§ 103(q), 108(a) and (c), 15 U.S.C. §§ 1602(q), 1607(a) and (c).

Because of the Board's all-encompassing authority, Congress authorized it to solicit the views of other interested agencies before framing regulations. § 109, 15 U.S.C. § 1608. Finally, recognizing the critical role it had conferred upon the Board, Congress instructed the Board, along with the Attorney General, to report to the Congress each year on the administration of the Act. In addition, the Board must assess for Congress the extent to which compliance with the Act is being achieved. § 114, 15 U.S.C. § 1613.

The legislative materials demonstrate that Congress intended the Board to play the critical role in shaping disclosure standards that the statute spells out. The House committee's report declared:

> "All substantive regulations in connection with the full disclosure of the terms and conditions of finance charges in credit transactions . . . shall be issued by the Board of Governors of the Federal Reserve System. No one can deny their experience and expertise in these matters. Accordingly, it is the view of your committee that, *for uniformity of application to all affected segments of the industries concerned, a single set of comprehensive regulations should be issued.*
>
> ". . . .
>
> ". . . The Board of Governors of the Federal Reserve System is to be the *central single agency* for issuing all regulations on credit disclosure . . . to insure *a single set of overall standards applicable for all forms of consumer credit* . . . ." H.R. Rep. No. 1040, 90th Cong., 1st Sess. 18-19 (1967) (emphasis added).

In addition, Congresswoman Sullivan, a House sponsor of the bill, chairperson of the subcommittee that considered the Act, and a conferee, described the conference bill to the House by explaining that "the Federal Reserve [will have] overall responsibility for issuing all regulations on the disclosure requirements." 114 Cong. Rec. 14387 (1968). *See also Truth in Lending — 1967: Hearings on S. 5 before the Subcommittee on Financial Institutions of the Senate Committee on Banking and Currency,* 90th Cong., 1st Sess. 18 (1967) (commentary of Senator Proxmire); 114 Cong. Rec. 1422 (1968) (comments of Congressman Latta).

This Court recognized the extraordinary powers that Congress conferred on the Board in its only previous Truth in Lending Act decision, *Mourning v. Family Publications Service, Inc.,* 411 U.S. 356 (1973). The Board had provided in Regulation Z that a consumer sales agreement payable in more than four installments was subject to the Act. The court of appeals found that the Board had exceeded its statutory authority by including within the Act transactions in which no finance charge had been imposed. This Court reversed the court of appeals and sustained the authority of the Federal Reserve Board. Congress had "determined to lay the structure of the Act broadly" and had entrusted "its construction to an agency with the necessary experience and resources to monitor its operation." The Congress in Section 105 "delegated to the Federal Reserve Board broad authority to promulgate regulations necessary to render the Act effective." 411 U.S. at 365. Accordingly, this Court found the regulation within the broad scope of the Board's power and rejected the challenge of the court of appeals to the Board's discretion.

Many courts have followed the lead of this Court in recognizing that the Federal Reserve Board is primarily

responsible for carrying out and construing the Truth in Lending Act and that the judiciary plays a distinctly secondary role. In *Mourning,* the issue was the validity of a regulation. The Court held that judges should not intervene as long as the contested regulation was reasonably related to the purposes of the statute, 411 U.S. at 369, and that, where "reasonable minds may differ," the courts should "defer to the informed experience and judgment of the agency to whom Congress delegated the appropriate authority," *id.* at 371-72. Similarly, numerous lower courts have recognized that the Board has the authority to promulgate regulations under the Act, and that the courts should not insert new disclosure requirements into Regulation Z when the Board has not seen fit to impose them itself. *See, e.g., Croysdale* v. *Franklin Savings Ass'n,* No. 78-1364 (7th Cir. July 12, 1979); *Griffith* v. *Superior Ford,* 577 F.2d 455 (8th Cir. 1978); *Philbeck* v. *Timmers Chevrolet, Inc.,* 499 F.2d 971 (5th Cir. 1974); *Gardner and North Roofing and Siding Corp.* v. *Federal Reserve Board,* 464 F.2d 838 (D.C. Cir. 1972).

The rationale of these cases becomes even more compelling when the Board's interpretation of its own regulation, and not the validity of a provision of the regulation, is at issue. The Board was empowered and directed to draft and adopt the regulation in the first instance. No question of the power and the duty of the Board has been raised here. The Board's interpretation of the very regulation that it has thus promulgated as Congress' undoubted delegate calls into play a broad principle of administrative law as well as respect for Congress' specific choice of the Federal Reserve Board as its truth-in-lending agent. The Board's interpretation of its regulation should be respected for the commonsensical reason that the author of a regulation knows its meaning best, as well as for the reason that the Board and not the courts understands the interaction

of the consumer credit market, the enforcement of the Act, and the regulation. For instance, the Fifth Circuit in *Philbeck* v. *Timmers Chevrolet, Inc.*, 499 F.2d 971, 977 (5th Cir. 1974), emphasized that the Board's construction of Regulation Z was "especially entitled to great deference." Other courts have reached a similar result by concluding that the Board's construction of the regulation is entitled to "great weight", *e.g.*, *United States* v. *One 1976 Chevrolet Station Wagon*, 425 F. Supp. 550 (D.N.M. 1976) *aff'd in part and rev'd in part on other grounds*, 585 F.2d 978 (10th Cir. 1978); and "substantial deference," *Gantt* v. *Commonwealth Loan Co.*, 573 F.2d 520 (8th Cir. 1978).

The Court of Appeals for the Eighth Circuit may have put it best. Addressing the very issue with which we are concerned here, the court stated that neither it nor any other court had power to enlarge the number of required disclosures.

> "That power has been expressly given only to the Board: 'The *Board* shall prescribe regulations to *carry out the purposes of [the Act].*' *Id.* § 1604 (emphasis added). The judiciary is limited to the specific disclosure requirements of Regulation Z in the consideration of whether disclosure of an acceleration clause is necessary to carry out the purposes of the Act." *Griffith* v. *Superior Ford*, 577 F.2d 455, 458 (8th Cir. 1978).

In deferring to the Federal Reserve Board's interpretations of Regulation Z, the courts whose opinions we have cited heeded not only *Mourning* but also this Court's general admonition to respect an agency's construction of its own regulations. In *Udall* v. *Tallman*, 380 U.S. 1, 16 (1965), this Court first stated that "it shows great

deference to the interpretation given [a] statute by the officers or agency charged with its construction." It went on, "When the construction of an administrative regulation rather than a statute is in issue, deference is even more clearly in order." The administrative construction is controlling unless it is "plainly erroneous or inconsistent with the regulation." *Bowles* v. *Seminole Rock Co.*, 325 U.S. 410, 414 (1945). That is, the interpretation need not be the only possible construction of the regulation; it need only be a reasonable interpretation. *Udall* v. *Tallman, supra; see also Thorpe* v. *Housing Authority of Durham*, 393 U.S. 268, 276, 280-81 (1969); *American Trucking Ass'ns* v. *United States*, 344 U.S. 298 (1953). Clearly the Federal Reserve Board's reading of its own Regulation Z as not calling for the disclosure of the very existence of an acceleration clause is reasonable.

III. JUDICIAL DEFERENCE TO THE FEDERAL RESERVE BOARD'S INTERPRETATION OF THE TRUTH IN LENDING ACT AND REGULATION Z IS VITAL TO THE ADMINISTRATION OF THE ACT

Truth-in-lending law has become a jurisprudence of great complexity and technicality, with its own literature and specialists.[5] The demands that the complexity of the

[5] Commerce Clearing House devotes a substantial portion of volumes 1 and 5 of its Consumer Credit Guide to truth in lending, while Prentice-Hall issues a Consumer and Commercial Credit Reporter. Warren Gorham & Lamont has published a Truth-in-Lending Manual. A survey of the Index to Legal Periodicals revealed that over 35 truth-in-lending articles were published between September 1973 and August 1976. Just on the issue presented here, *see* Note, *Disclosure of Acceleration Clauses under Federal Truth in Lending*, 26 Kan. L. Rev. 289 (1978); Note, *Acceleration Clause Disclosure under the Truth in Lending Act*, 77 Colum. L. Rev. 649 (1977); Note, *Acceleration Clause Disclosure: A Truth in Lending Policy Analysis*, 53 Ind. L.J. 97 (1977); Comment, 46 U. of Cinn. L. Rev. 284 (1977); Comment, 54 Tex. L. Rev. 652 (1976).

law has placed upon what should be simple and comprehensible disclosure forms that would enable consumers to know readily what credit is going to cost them are evident in this record. Any thoroughgoing simplification is a task for Congress. *See Simplification of the Truth in Lending Act, Oversight Hearings before the Subcommittee on Consumer Affairs of the House Committee on Banking Finance and Urban Affairs,* 95th Cong., 2d Sess. (1978). This Court can, however, help. Practically it cannot help very much by the exercise of its review power. It cannot itself review every dubious or conflicting truth-in-lending decision. It can help materially by making clear to the other courts that, when the meaning of the disclosure provisions of the statute or of Regulation Z is in issue, they are bound to defer to the expert views of the Federal Reserve Board.

Most of the complexity of truth in lending arises from litigation. Not all courts hearing truth-in-lending cases have been willing to yield primacy to the agency on which Congress conferred primacy. This recalcitrance has contributed to a lack of uniformity in the outcome of truth-in-lending cases, which is expensive and disrupting for creditors and does not assist borrowers at all. In disregarding the Federal Reserve Board's views, the federal courts have dictated numerous disclosure details, as varied as the number of sheets of paper required for a truth-in-lending disclosure form, *Pedro* v. *Pacific Plan of California,* 393 F. Supp. 315, 322-23 (N.D. Calif. 1975); and the disclosure of a 10-day limitation on security interests embodied in state law, *Willis* v. *Town Finance Corp. of Atlanta,* 416 F. Supp. 10 (N.D. Ga. 1976). *See also Jones* v. *Community Loan and Investment Corp.,* 544 F.2d 1228 (5th Cir. 1976), *cert. denied,* 431 U.S. 934 (1977). The acceleration clause dispute that is now here is a prime example. At least three different views

have been taken by courts of appeals. None of the circuits has specifically embraced the Federal Reserve Board's position in its entirety. *See Price* v. *Franklin Investment Co.,* 574 F.2d 594 (D.C. Cir. 1978); *Griffith* v. *Superior Ford,* 577 F.2d 455 (8th Cir. 1978); *McDaniel* v. *Fulton National Bank,* 571 F.2d 948 (5th Cir.) (en banc), *rehearing denied,* 576 F.2d 1156 (5th Cir. 1978); *Begay* v. *Ziems Motor Co.,* 550 F.2d 1244 (10th Cir. 1977); *Johnston* v. *McCrackin - Sturman Ford, Inc.,* 527 F.2d 257 (3d Cir. 1975).

In each instance, the court presumably has acted with the best of intentions. District court judges and appellate court panels have thought that they had a better grasp on the congressional intent behind the Truth in Lending Act and the meaning of Regulation Z than the Federal Reserve Board. But the resulting patchwork of decisions has had a cumulative effect that threatens to frustrate the congressional design behind the Truth in Lending Act. The House committee, it will be recalled, emphasized that the Federal Reserve Board alone was being empowered to adopt substantive disclosure regulations "to insure a single set of overall standards applicable to all forms of consumer credit . . . ." (P. 11, *supra.*) It cannot be said that there is a single set of standards today.

Phillip E. Coldwell, a member of the Board of Governors of the Federal Reserve System, last year told a House subcommittee exploring the need for simplification of truth in lending:

> "A large amount of truth in lending litigation continues to burden the courts. Unfortunately, compliance with a specific truth in lending requirement often means different things to different courts. Courts in one district

may interpret a statutory requirement differently from those in another.

> "Many creditors operating outside local areas have had to design different disclosure statements for different judicial districts or circuits. Court opinions also occasionally differ from Board or staff opinions on the same issue. The consistent, uniform interpretation of the act has become almost an impossibility. Even though creditors may make every effort to comply with the statute's requirements, multitudinous interpretations of broad statutory language make it impossible for them to know that their disclosure statements comply fully with the act's provisions." *Simplification Hearings, supra* at 79.

Not only creditors suffer. So do borrowers and purchasers. Governor Coldwell commented:

> "At the present time, the consumer often receives lengthy and complex truth in lending disclosure interspersed among contractual provisions and state law disclosures. We believe that truth in lending cannot be truly effective when the consumer is presented with discouragingly detailed and complicated disclosures. Overwhelming the consumer cannot result in a better informed, credit conscious consumer; rather, it will result in a consumer who will often ignore all disclosures and not attempt to digest the information provided." *Id.* at 78;[6] *see also* H.R. Rep. No.280, 95th Cong., 1st Sess. 32-33 (1977) (noting the complexity of truth-in-lending forms and creditors' quandary in determining how to comply with the Act.)

[6] An excellent empirical study confirms Governor Coldwell's opinion. Davis, *Protecting Consumers from Overdisclosure and Gobbledygook: An Empirical Look at the Simplification of Consumer-Credit Contracts,* 63 Va. L. Rev. 841 (1977). The author explored consumer comprehension of credit terms by showing a standard consumer credit contract to one group and then showing a simplified version to another group with comparable characteristics. He found that consumers, particularly low income consumers, understood the terms of the contract much better when, among other things, several less-important disclosure items were deleted. *Id.* at 870-874, 881-84.

The decision below, whose rationale is to be found in the *St. Germain* case, exemplifies the judicial activism that has prompted the federal courts to write as much truth-in-lending law as they have. The court of appeals substituted its evaluation of the congressional intent and the meaning of Regulation Z for the Board's authoritative views. The Board's conclusion that the existence of acceleration clauses need not be disclosed was at the very least reasonably related to the language of the Board's own regulation. Nevertheless, the court below concluded that universal disclosure of acceleration clauses would best fulfill the intent of Congress and disregarded the Board's views.[7] The court failed to respect the unique role of the Federal Reserve Board in interpreting the Truth in Lending Act, the role that this Court emphasized so strongly in *Mourning*. The Court, in reversing, should make clear that the primacy of the Federal Reserve Board means that a court must accept the Board's views if they are reasonable regardless of what the court might decide as an original matter.

[7] When courts have overruled agency interpretation of regulations, the basis has frequently been the fact that the agency has ensnared by interpretation someone who owes no duty under the regulation itself. *See* 4 K. Davis, Administrative Law § 30.12 (1958). In this case, the Ninth Circuit, not the Board, has imposed a disclosure obligation that would surprise someone who had read only the regulation.

CONCLUSION

Amici believe it important that the judgment below be reversed and that this Court make clear to all courts hearin truth-in-lending cases the necessity that, in construing the Act and Regulation Z, they defer to the views of the Federal Reserve Board.

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